

10-02525-D

COMPLAINT
 PLAINTIFF: HERITAGE PACIFIC FINANCIAL
 DEFENDANT: ROGER JIMENEZ
 JUDGE: HON. R. BARDWIL
 RELATED CASE: 10-33727

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 CLERK: U.S. BANKRUPTCY COURT
 EASTERN DISTRICT OF CALIFORNIA
 SACRAMENTO DIVISION ares



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Attorney for Plaintiff
 HERITAGE PACIFIC FINANCIAL LLC.

**UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF CALIFORNIA
 SACRAMENTO DIVISIONAL OFFICE**

In Re:
 ROGER AVILA JIMENEZ

Debtor.

HERITAGE PACIFIC FINANCIAL, LLC.
 D/B/A HERITAGE PACIFIC FINANCIAL, a
 Texas Limited Liability Company,

Plaintiff,

vs.

ROGER AVILA JIMENEZ
 Defendants.

Chapter 7
 Bankruptcy No. : 2:10-bk-33727

Adversary Case No.:

**COMPLAINT TO DETERMINE
 DISCHARGEABILITY OF DEBT
 [11 U.S.C. §523(a)(2)(A); 11 U.S.C.
 §523(a)(2)(B)]**

DATE: See Summons

BY FAX

**COMPLAINT TO DETERMINE THE
 DISCHARGEABILITY OF DEBT AND FOR JUDGMENT**

Plaintiff, through its attorney, Brad A. Mokri, of Law Offices of Mokri & Associates,
 states as follows:

I. PARTIES AND JURISDICTION

1. This is an adversary proceeding in bankruptcy brought by Heritage Pacific
 Financial, LLC. dba Heritage Pacific Financial pursuant to 11 U.S.C. § 523.

2. Defendant filed a Chapter 7 bankruptcy petition on May 25, 2010.

COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

1 3. Jurisdiction is vested in this proceeding pursuant to 28 U.S.C. § 157, 28 U.S.C.
2 §1334, AND 11 U.S.C. § 523; this matter is a core proceeding.

3 4. Plaintiff is a creditor of defendant. Plaintiff is the assignee and current owner
4 and/or holder of Defendant's loan and related mortgage note.

5 **II. FIRST CLAIM FOR RELIEF**

6 **False Pretenses, False Representation or Actual Fraud**

7 **[11 U.S.C. § 523(a)(2)(A); 11 U.S.C. §523(a)(2)(B)]**

8 5. Plaintiff re-alleges and incorporates by reference the allegations set forth in
9 paragraphs 1 through 4, above.

10 6. Plaintiff has attempted to resolve this matter prior to filing this complaint by
11 contacting the Defendant's attorney.

12 7. In an effort to obtain funds to purchase real property, Defendant applied for and
13 obtained a loan bearing Loan No. XXXX0161.

14 8. Defendant utilized the aforementioned loan, creating a balance due and owing on
15 this loan of \$85,818.00 including interest as of the date the bankruptcy petitioner was filed.

16 9. In an effort to obtain funds to purchase his property, Defendant caused to have
17 completed on his behalf, a Uniform Residential Loan Application, otherwise known as a 1003
18 Form, which Defendant executed and signed.

19 10. On the Uniform Residential Loan Application, Defendant certified the accuracy
20 of the information contained therein and consented to the verification and re-verification of the
21 information contained therein.

22 11. Among the information provided and certified by Defendant in his Uniform
23 Residential Loan Application, Defendant was required to certify information regarding his
24 current employer, statements of his gross monthly income, and to certify that her intended to use
25 the loan proceeds to purchase real property which Defendant intended to use as his primary
26 residence.

27 12. In furtherance of his effort, because Defendant knew that his then current
28 income was insufficient to support the approval of the loan and/or in an effort to secure the more

1 favorable primary-residence financing rate, Plaintiff is informed, believes and thereon alleges
2 that Defendant:

3 a) Provided, prepared, caused to be prepared, false loan applications, which
4 misstated his employment, income and/or intended use of the property as a primary residence;

5 b). Certified a false loan application, which misstated his employment income and/or
6 intended use of the property as a primary residence; and

7 c). Caused his agents to submit to lenders a false loan application and other loan
8 related documents

9 13. The lender did not know, and had no reason to know, that the information and
10 documentation provided by Defendant in, and in conjunction with, his loan applications was
11 false, and in reliance on the information and documentation provided by Defendant to the lender
12 therein approved the loan.

13 14. Defendant executed a promissory note in favor of his initial lender, its
14 successors, transferees, and assigns (collectively hereinafter "LENDER").

15 15. The proceeds of the loan, as referenced in the promissory note, were to be used by
16 Defendant in the purchase or refinance of the property described therein. In exchange,
17 Defendant agreed and promised to pay Lender according to the mutually agreed upon terms and
18 conditions more particularly described in the promissory notes.

19 16. At the time of the execution of the loan, Defendant failed to disclose to Lender
20 that he did not and would not have been able to earn the amount of income as represented on the
21 loan applications.

22 17. Lender fully performed, and Defendant acquired title to the property.

23 18. The promissory note was duly assigned by the original lender and/or its assignees
24 to Plaintiff, who is the current owner and/or holder of Defendant's Loan and related mortgage
25 note.

26 19. Defendant has defaulted on his obligations to re-verify the information contained
27 in their Uniform Residential Loan Application. Despite Plaintiff's attempts to secure
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1 information from Defendant to re-verify the information contained in his loan application,
2 Defendant has failed and/or refused to comply with Plaintiff's requests.

3 20. By reason of the foregoing, Defendant obtained money from Lender through false
4 pretenses, false representations and actual fraud.

5 21. Defendant, therefore, had a specific intent to defraud Lender by accepting the
6 benefits of the financing without ever intending to repay the same.

7 22. Defendant's actions constitute material misrepresentations of the facts.

8 23. Defendant intended for Lender to rely on those misrepresentations.

9 24. Lender did rely upon Defendant's misrepresentations of repayment and was
10 induced to lend money to Defendant by those misrepresentations.

11 25. Lender reasonably relied on Defendant's misrepresentations.

12 26. As a result of Defendant's conduct, Plaintiff has suffered damages at a minimum
13 in the amount of \$85,818.00 plus interest and reasonable attorney fees.

14 Pursuant to 11 USC § 523(a)(2), Defendant should not be granted a discharge of this debt
15 to the Plaintiff in the amount of \$85,818.00 plus interest and reasonable attorney fees.

16 **III. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays that this Court grant the following relief:

18 1. A monetary judgment against Defendant in the amount of \$85,818.00, plus
19 accrued interest at the contractual rate, plus, additional interest at the contractual rate, which will
20 continue to accrue until the date of judgment herein;

21 2. An order determining that such debt is non-dischargeable under 11 USC §
22 523(a)(2);

23 3. An order awarding Plaintiff its attorneys' fees and costs incurred herein; and

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1 4. An order awarding Plaintiff such additional relief as this Court deems just and
2 equitable.

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4 Dated: August 26, 2010

Respectfully Submitted,
LAW OFFICES OF MOKRI & ASSOCIATES

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7 By: 

8 Brad A. Mokri
9 Attorney for Plaintiff
Heritage Pacific Financial, LLC.
dbaHeritage Pacific Financial
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